

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 28TH FEBRUARY 2007 / 9TH PHALGUNA 1928

MFA.No. 40 of 2000

OPMV.156/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR

APPELLANT: PETITIONER

K. KANNAN, S/O. GOPALAKRISHNAN, KUNDUK HOUSE,
ERAVIMANGALAM P.O., THRISSUR DISTRICT.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS:

1. FRANCIS, S/O. AUGUSTHY, THEKKANATH HOUSE,
P.O. PURANATTUKARA, TRICHUR.
2. MOHANAN, S/O. GOPALAN, MAHIKKATH HOUSE, CHEERACHI,
OLLUR VILLAGE, TRICHUR DISTRICT. (DELETED)
3. ORIENTAL INSURANCE CO. LTD., KUNNAMKULAM,
TRICHUR DISTRICT.

THE NAME OF R2 IS DELETED FROM THE PARTY ARRAY VIDE ORDER
DT. 1-2-2007 ON M.F.A.

BY ADV. SRI.VPK.PANICKER

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/02/2007,
THE COURT, ON 28/02/2007, DELIVERED THE FOLLOWING:

P.R. Raman & S. Siri Jagan, JJ.
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M.F.A. No. 40 of 2000
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Dated this, the 28th February, 2007.

J U D G M E N T

Siri Jagan, J.

Dissatisfied with the quantum of compensation awarded by the Motor Accidents' Claims Tribunal, Thrissur, the claimant in M.V.O.P.No. 156/1997 before the Tribunal has come up in appeal claiming enhanced compensation. Since negligence on the part of the driver has been found in favour of the appellant and the liability of the Insurance Company has also been admitted, it is not necessary to go into the details regarding the same in this judgment. Therefore, we shall confine ourselves to the question posed before us which is as to whether the appellant is entitled to enhanced compensation in addition to what has been awarded by the Tribunal.

2. The accident occurred on 30-9-1996. After the accident, the appellant was taken to a private hospital, namely, Heart Hospital, Thrissur. The Tribunal noted that as per Ext. A3 wound certificate, the appellant has sustained the following injuries.

- (a) Compound fracture to right humerus.
- (b) Segmental comminuted fracture to right tibia.

The appellant was admitted in that hospital on 30-9-1996 and was discharged on 12-10-1996. Wound debridment and open reduction and internal fixation of right humerus were done under general anesthesia. Closed reduction of right lower leg was done and POP cast was applied. The Tribunal noted these from Ext. A5 discharge card. The implants were later removed at Medical College Hospital, since, according to the appellant, he could not afford the expense of the private hospital. In fact, the Tribunal noted that Ext. A4 discharge card issued from the Medical College Hospital, Thrissur would show that the operation of removal of implants was done on 29-3-1997 for

which purpose, the appellant was an inpatient during the period from 21-3-1997 to 7-4-1997. The Tribunal accepted that the appellant might have been bed ridden at least for a period of three months. The appellant was an Electrician by profession and he also had produced proof to the effect that he had a National Trade Certificate in the trade of Electrician. Although the appellant claimed that his monthly income was Rs.4,500/-, in the absence of any evidence produced in that regard, the Tribunal fixed the income as Rs.1,500/- p.m. The age of the appellant is not mentioned in the award. The appellant had also produced a disability certificate certifying that he had suffered a permanent disability of 13% on account of the accident. However, the Tribunal refused to accept the same for want of proper proof. On the basis of the above inputs, the Tribunal awarded compensation to the appellant under various heads as follows:

(a)	Pain and suffering	-	Rs. 15,000.00
(b)	Loss of amenities	-	Rs. 12,000.00
(c)	Loss of earnings	-	Rs. 4,500.00
(d)	Incidental expenses	-	Rs. 30,000.00
(e)	Permanent disability	-	Rs. 15,000.00

	Total	-	Rs. 76,500.00
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3. The appellant contends that the income fixed by the Tribunal as Rs. 1,500/- is too low considering the fact that the appellant was an Electrician and he had the qualifications for working as an Electrician. According to him, he was an Electrician working temporarily on contract basis with the Kerala State Electricity Board. Therefore, he contends that his monthly income should have been fixed at least as Rs. 2,000/-. He would submit that considering the serious injuries

sustained by the appellant and the fact that he was bed ridden for more than three months, he was entitled to much more than Rs. 15,000/- awarded as compensation for pain and suffering as also the compensation for loss of amenities. He also submits that the Tribunal went wrong in discarding the disability certificate on the ground that it has not been properly proved. He would submit that since the same has been admitted in evidence and the same is issued by the doctor who treated him, that too a doctor from Government Medical College, it should have been relied upon for the purpose of calculation of permanent disability. He also submits that the Tribunal went wrong in not adopting the conventional method for computing compensation for permanent disability. Counsel for the appellant submits that considering the age of the appellant, a multiplier of 17 should have been adopted and compensation for permanent disability at the rate of 13% should have been computed on the basis that his monthly income was Rs. 2,000/-. There is a further contention that the Tribunal did not award any compensation for bystander for four months, extra nourishment and transportation to hospital, which the Tribunal ought to have.

4. We have considered the arguments on both sides.

5. We are not inclined to accept the contention of the appellant that the amount of Rs. 15,000/- awarded as compensation for pain and suffering is low. So also is the case of compensation for loss of amenities. However, we find merit in the contention of the appellant that the Tribunal ought to have awarded compensation in respect of expenses for bystander, extra nourishment and transportation to hospital. We feel that under these three heads, a total amount of Rs. 5,000/- would be a reasonable compensation in addition to what has been awarded by the Tribunal. We also find some merit in the contention of the appellant that the compensation fixed by the

Tribunal for permanent disability as Rs. 15,000/- is too low. However, we are not prepared to accept the contention that the multiplier of 17 and the full percentage of disability of 13% has to be taken as parameters for fixing compensation for permanent disability. Taking into account the entire facts and circumstances of the case, we are prepared to accept the monthly income of the appellant as Rs.2,000/-, the percentage of disability as 10% and the multiplier to be adopted as 10. If compensation is calculated on that basis, the appellant would be entitled to Rs. 24,000/- as compensation for permanent disability. We are inclined to round this off as Rs.25,000/-. Thus, under this head, the appellant would be entitled to a further sum of Rs. 10,000/- in addition to what has been awarded by the Tribunal.

As a result, the appellant would be entitled to an additional compensation of Rs.15,000/- over and above what has been awarded by the Tribunal, which also shall be paid to the appellant. This amount would carry interest at the rate of 9% p.a. From the date of the petition before the Tribunal. The 3rd respondent-Insurance Company is directed to deposit the said amount of Rs.15,000/- with interest at the rate of 9% from the date of the petition within one month from the date of receipt of a copy of this judgment. In all other aspects, the award of the Tribunal would stand. The appeal is disposed of as above.

Sd/- P.R. Raman, Judge.

Sd/- S. Siri Jagan, Judge.

Tds/

[True copy]

P.S to Judge.

M.F.A.No. 40/2002

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P.R. Raman & S. Siri Jagan, JJ.

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M.F.A. No. 40 of 2000

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J U D G M E N T

28th February, 2007.